

EXHIBIT 9

1 UNITED STATES DISTRICT COURT

2 MIDDLE DISTRICT OF TENNESSEE

3 _____

4 L.E., by his next friends and
5 parents, SHELLEY ESQUIVEL and
6 MARIO ESQUIVEL

7 Plaintiff

8 v.

No.

9 BILL LEE, in his official 3:21-cv-00835
10 capacity as Governor of
11 Tennessee; PENNY SCHWINN, in her
12 official capacity as the
13 Tennessee Education
14 Commissioner; TENNESSEE STATE
15 BOARD OF EDUCATION; SARA HEYBURN
16 MORRISON, in her official
17 capacity as the Executive
18 Director of the Tennessee State
19 Board of Education; NICK
20 DARNELL, MIKE EDWARDS, ROBERT
21 EBY, GORDON FERGUSON, ELISSA
22 KIM, LILIAN HARTGROVE, NATE

1 MORROW, LARRY JENSEN, DARRELL
2 COBBINS, and EMILY HOUSE, the
3 individual members of the
4 Tennessee State Board of
5 Education, in their official
6 capacities; KNOX COUNTY BOARD OF
7 EDUCATION a/k/a KNOX COUNTY
8 SCHOOLS a/k/a KNOX COUNTY SCHOOL
9 DISTRICT; ROBERT M. "BOB"
10 THOMAS, in his official capacity
11 as Director of Knox County
12 Schools

Defendants

14 -----
15 VIDEOCONFERENCE DEPOSITION OF
16 JONATHAN FRANKLIN HIGGINS
17 DATE: Monday, July 25, 2022
18 TIME: 11:15 a.m.
19 LOCATION: Remote Proceeding
20 Washington, D.C. 20005
21 REPORTED BY: Janel B. Folsom, Notary Public
22 JOB NO.: 5338660

1 A P P E A R A N C E S

2 ON BEHALF OF PLAINTIFF L.E., BY HIS NEXT FRIENDS AND
3 PARENTS, SHELLEY ESQUIVEL AND MARIO ESQUIVEL:

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10
11 ON BEHALF OF DEFENDANTS KNOX COUNTY BOARD OF EDUCATION
12 A/K/A KNOX COUNTY SCHOOLS A/K/A KNOX COUNTY SCHOOL
13 DISTRICT AND ROBERT M. "BOB" THOMAS, IN HIS CAPACITY
14 AS DIRECTOR OF KNOX COUNTY SCHOOLS:

15 JESSICA G. A. JERNIGAN-JOHNSON, ESQUIRE (by
16 videoconference)

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A P P E A R A N C E S (Cont'd)

2 ON BEHALF OF DEFENDANTS BILL LEE, IN HIS OFFICIAL
3 CAPACITY AS GOVERNOR OF TENNESSEE; PENNY SCHWINN, IN
4 HER OFFICIAL CAPACITY AS THE TENNESSEE EDUCATION
5 COMMISSIONER; TENNESSEE STATE BOARD OF EDUCATION; SARA
6 HEYBURN MORRISON, IN HER CAPACITY AS THE EXECUTIVE
7 DIRECTOR OF THE TENNESSEE BOARD OF EDUCATION; AND NICK
8 DARNELL, MIKE EDWARDS, ROBERT EBY, GORDON FERGUSON,
9 ELISSA KIM, LILLIAN HARTGROVE, NATE MORROW, LARRY
10 JENSEN, DARRELL COBBINS, AND EMILY HOUSE, THE
11 INDIVIDUAL MEMBERS OF THE TENNESSEE STATE BOARD OF
12 EDUCATION, IN THEIR OFFICIAL CAPACITIES:

13 STEPHANIE A. BERGMAYER, ESQUIRE (by
14 videoconference)

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1 A P P E A R A N C E S (Cont'd)

2 ALSO PRESENT:

3 Sasha Buchert, Esq., Lambda Legal Defense and
4 Education Fund Inc. (by videoconference)

5 Thomas F. Costello-Vega, Esq., WilmerHale, LLP
6 (by videoconference)

7 Clark L. Hildabrand, Esq., Office of Tennessee
8 Attorney General (by videoconference)

9 Brandon Townsend, Office of Tennessee Attorney
10 General (by videoconference)

11 Jerry Curran, Technician, CMI Production Services
12 (by videoconference)

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I N D E X

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1 and sex.

2 Q Okay. So the wellness course includes sex
3 education, as well as physical and mental health? Is
4 that --

5 A Yes.

6 Q -- right? Okay. But physical education is
7 more like a gym class?

8 A Yes.

9 Q Okay. But you can opt out of the physical
10 education class by playing a varsity sport. Is that
11 right?

12 A Yes.

13 Q But you cannot opt out of the wellness
14 class. Is that right?

15 A No, sir.

16 Q Okay. When do students generally take the
17 wellness class?

18 A Well this upcoming year, I think we're --
19 it's going back to a sophomore class. But in the
20 years prior, it was the freshman class.

21 Q Okay. You are the golf coach of both the
22 boys' team and the girls' team, correct?

1 A Yes, sir.

2 Q And as you said, you're the only golf coach
3 at Farragut High School currently, right?

4 A Yes, sir. I've got a volunteer helping me
5 right now, while I'm on vacation.

6 Q Okay. What are your responsibilities as the
7 golf coach?

8 A To set up practices, conduct practices, set
9 up matches, and give lineups for matches, and oversee
10 matches and district tournament and region tournament.

11 Q Okay. Sounds like a lot to do alone. And
12 does Farragut High School have a junior varsity golf
13 team?

14 A The golf season is tricky. So we don't
15 technically have a junior varsity team, but if we
16 needed to play a JV match or two, we probably could.

17 Q What do you mean that the season is tricky?

18 A You get 14 dates to play golf matches. And
19 in -- in those 14 days are included are JV matches.
20 So most teams don't have JV matches.

21 We don't play JV matches 'cause they have to
22 played on the same day and most teams don't have two

1 A ESPN, Sports Illustrated, Golf Digest,
2 things like that.

3 Q Okay. Do you read Golf Digest to help you
4 as a coach of golf?

5 A And as a player of golf.

6 Q Okay. How long have you been playing golf?

7 A Fifteen years.

8 Q Do you do it as a hobby?

9 A Yes.

10 Q Have you ever played golf professionally?

11 A NO.

12 Q Okay. In your review of sports trade press,
13 have you ever read articles about the benefits of
14 sports for high school students?

15 A Not that I'm aware of, no.

16 Q Okay.

17 MR. O'TOOLE: I'd like to introduce as
18 Exhibit 1 -- which is tab 2, Sasha. It's an article
19 from NFHS.

20 Just let me know when you have it up in
21 the Exhibit Share, Mr. Higgins.

22 //

(Exhibit 1 was marked for identification.)

THE WITNESS: Yes.

MR. O'TOOLE: You got it?

BY MR. O'TOOLE:

Q Have you seen this document before?

A Not that I'm aware of, no.

Q Okay. You can take the time to review it.

I'm just going to sort of use this as a framework for our conversation.

A Mm-hmm.

Q If you can look at the first page, in the first paragraph, beginning with, "the NFHS"?

A Mm-hmm.

Q It says, "the NFHS, based in Indianapolis, Indiana, is the national leader and advocate for high school athletics, as well as fine and performing arts programs." Do you see that?

A Yes.

Q Okay. And then in the next paragraph, the first line says, "the NFHS writes playing rules for high school sports and provides guidance on a

1 multitude of national issues." Do you see that?

2 A Yes.

3 Q Is that generally consistent with your
4 knowledge of what the NFHS does?

5 A Yes.

6 Q Okay. And then if you can go to the second
7 page.

8 A Yes.

9 Q And the second paragraph, starting with,
10 "participating"?

11 A Yes.

12 Q It says, "participating in high school
13 athletics has long-lasting, definitive benefits,
14 especially when athletic leaders create an environment
15 that challenges and rewards the growth mindset." Do
16 you see that?

17 A Yes.

18 Q Do you agree, generally, with that premise
19 that participation in high school sports has
20 definitive benefits for students?

21 A I do.

22 Q Okay. And what are some of those benefits

1 that you observed your students getting from playing
2 sports?

3 A As I said, with myself, I think discipline,
4 accountability, responsibility, teamwork. These are
5 all things that I preach to my kids that they'll need
6 as they grow older.

7 Q Great.

8 A How to deal with adversity. Things of that
9 nature.

10 Q Mm-hmm. So resilience, for example?

11 A Yes.

12 Q Okay. And this may be obvious, but
13 participating in high school sports also has physical
14 benefits, correct?

15 A Yes.

16 Q What sorts of competitive skills do you
17 think make a good basketball player?

18 A What's their work ethic like, their
19 determination. Really, that's -- to be a good
20 basketball player in high school level, that's about
21 all you really need. Can you work hard? And can
22 you -- are you determined to get better?

1 Q Also just like to go back to this article.
2 In the third paragraph, it says, "three of the most
3 important participation takeaways that students
4 continue to practice after graduation are, one, a
5 stronger sense of self-confidence in building
6 relationships with others and having an expanded
7 capacity for empathy; two, developing a better
8 understanding of self and in so doing understanding
9 how their actions affect others; and three, building
10 foundations for lifelong fitness habits." Do you see
11 that?

12 A Yes.

13 Q Do you generally agree that those are some
14 of the benefits students may derive from participating
15 in sports?

16 A Yes. Yes.

17 Q All right. Great. Back to basketball. In
18 basketball, athletes often come into physical contact
19 with one another; is that right?

20 A Yes.

21 Q So for example, if you and I were playing
22 and you went for a shot and I hit you, you may --

1 there may a foul declared, correct?

2 A Yes.

3 Q And that physical interference could injure
4 you or me, correct?

5 A Yes.

6 Q But you, in your personal capacity as a
7 basketball player, you understand that risk of injury
8 any time you take the court, right?

9 A Yes.

10 Q And you willingly take on that risk; is that
11 right?

12 A Yes.

13 Q In golf, players generally don't come into
14 physical contact with one another; is that right?

15 A No.

16 Q And that's because, generally, golfers take
17 their turn to swing on a particular hole, right?

18 A Yes.

19 MS. JERNIGAN-JOHNSON: Object to the
20 form.

21 BY MR. O'TOOLE:

22 Q So it's rare for two golfers to end up

1 hitting each other, for example, right?

2 A Yes.

3 Q Okay. So would you say that in golf, the
4 risk of injury due to physical contact is less than it
5 is in basketball?

6 A Yes.

7 Q What competitive skills would you say make a
8 good golfer?

9 A Determination, hard work, mental toughness.
10 And then the physical attributes of being a good
11 athlete -- swing speed, strength, etc., etc., etc.

12 MR. O'TOOLE: I'd like to introduce
13 Exhibit 2. Sasha, that's tab 3. These are excerpts
14 from the Farragut Golf Twitter account.

15 (Exhibit 2 was marked for
16 identification.)

17 THE WITNESS: Okay.

18 MR. O'TOOLE: Just let me know when you
19 have those up.

20 THE WITNESS: Yes.

21 BY MR. O'TOOLE:

22 Q Do you recognize these as excerpts from the

1 transgender student could not try out for your boys'
2 golf team?

3 A No.

4 Q Okay.

5 MR. O'TOOLE: I'd like to introduce as
6 Exhibit 6 -- it's tab 8, Sasha. Just let me know when
7 you have it up.

8 (Exhibit 6 was marked for
9 identification.)

10 THE WITNESS: Yes.

11 BY MR. O'TOOLE:

12 Q Have you seen this document before?

13 A Yes.

14 Q Okay. What do you know about this document?

15 A It's the Knox County's policy for sports.

16 Q Okay. And are you given this policy before
17 the start of a new school year to review?

18 A No.

19 Q But this policy's accessible to you?

20 A Yes.

21 Q Okay. And how so?

22 A I -- I can go get it if I need to, but,

1 generally, we talk to Coach Dodgen. Dodgen -- Coach
2 Dodgen lets us know new things we need to be on the
3 lookout for.

4 Q Okay. So this is an example of a policy
5 where you would check with Coach Dodgen to see to make
6 sure that you were aligned with that policy; is that
7 right?

8 MS. JERNIGAN-JOHNSON: Object to the
9 form.

10 A This is a policy in which he tells us each
11 year, "there's been changes to the policy."

12 Q Okay. So if you look at the top and, as you
13 can see, in this document there's some red lettering
14 and some black lettering. If you look at the top
15 right-hand corner, there's a box called Review.

16 A Yep.

17 Q And 5-17 is crossed out.

18 A Mm-hmm.

19 Q And then 7 dash [sic] 21 looks like it's
20 been added, right?

21 A Yes.

22 Q Do you understand that to mean July 21?

1 A Yes.

2 Q Okay. And in lines 15 to 18, there's some
3 red text.

4 A Yes.

5 Q Do you understand that to be an addition to
6 this policy?

7 A Yes.

8 Q Okay. And so it says here, "a student's
9 gender for purposes of participation in middle or high
10 school athletics is determined by the student's sex at
11 the time of the student's birth."

12 "A valid original birth certificate must be
13 provided for this purpose." Do you see that?

14 A Yes.

15 Q When a policy changes, how quickly does
16 Mr. Dodgen usually let you know that the policy has
17 changed?

18 A Not -- if it pertains to my sport, probably
19 pretty soon.

20 Q Okay. Now, is this policy sports-specific?

21 A No.

22 Q So it would apply to all sports, correct?

1 A Yes.

2 Q Okay. So this change it looks like was
3 implemented in July 2021, right?

4 A Mm-hmm, yes.

5 Q So you would expect Mr. Dodgen to have
6 informed you shortly thereafter of this policy change;
7 is that right?

8 A Probably at our coaches' meeting during that
9 first week of school.

10 Q Okay. And is the first week of school in
11 August?

12 A I think last year we started July 29th. So
13 somewhere around there, yes.

14 Q Okay. So around roughly July 2021 is when
15 you would've seen this updated or been communicated
16 this updated policy; is that --

17 A Yes.

18 Q -- accurate? Okay. Prior to this addition,
19 did you ever require a student to present their birth
20 certificate to try out for your golf team?

21 A No.

22 Q Do you currently require a student to

1 present their birth certificate to try out for your
2 golf team?

3 A I have not.

4 Q Okay. Do you know of other coaches who
5 have?

6 A I do not.

7 Q In your capacity as a Farragut High School
8 coach though, you are obligated to comply with Knox
9 County Board of Education policies, right?

10 A Yes.

11 Q Okay. So if you are not requiring a student
12 to present their birth certificate, that may be a
13 technical violation of this policy, right?

14 MS. JERNIGAN-JOHNSON: Object to the
15 form.

16 A I'm not sure.

17 Q Under this policy, where it says, "a
18 student's gender for purposes of participation in
19 middle or high school athletics is determined by the
20 student's sex at the time of the student's birth,"
21 that means that if a student who was born female tries
22 out for your boys' golf team, they are not eligible to

1 participate on that boys' golf team, right?

2 A Mmm. Based on that, yes.

3 Q Okay. And when you say, "yes," you mean
4 they are not eligible, correct?

5 A Yes.

6 Q And under this policy, would you agree that
7 a female student would not be eligible to try out for
8 the football team?

9 MS. JERNIGAN-JOHNSON: Object to the
10 form.

11 BY MR. O'TOOLE:

12 Q You can answer.

13 A I'm not sure.

14 Q What would be different between trying out
15 for your boys' golf team and trying out for the
16 football team?

17 A I'm not sure. I don't coach golf -- I mean
18 coach football.

19 Q Okay. But with respect to your golf team,
20 if a female student tried to try out for the boys'
21 team, to comply with that policy, that female student
22 would not be able to be eligible to try out for your

1 golf team, right?

2 MS. JERNIGAN-JOHNSON: Object to the
3 form.

4 A For my boys' team, yes. They would not be
5 eligible.

6 Q Okay. And you'll notice that there's some
7 footnotes here; it's on the second page.

8 A Mm-hmm.

9 Q Footnote TCA --

10 A Yeah.

11 Q -- Section 496310 [sic].

12 A Yes.

13 Q Do you know what that's a reference to?

14 A No.

15 Q Okay. So before the addition of this
16 language in red to the Knox County Board of Education
17 policy, were you aware of any restrictions on
18 transgender students' ability to try out for your golf
19 team?

20 A No.

21 MS. JERNIGAN-JOHNSON: Object to the
22 form.

1 A No.

2 Q What about trying out for any team at
3 Farragut High School?

4 MS. JERNIGAN-JOHNSON: Object to the
5 form.

6 A I was not.

7 Q And this addition to the policy -- strike
8 that.

9 This language in the Knox County Board of
10 Education policy as revised differs from the language
11 that was in Exhibit 5 -- the TSSAA Transgender
12 Policy -- right?

13 MS. JERNIGAN-JOHNSON: Object to the
14 form.

15 MS. BERGMEYER: Form.

16 THE WITNESS: Yes.

17 MR. O'TOOLE: Yeah.

18 BY MR. O'TOOLE:

19 Q Because that TSSAA Transgender Policy would
20 have allowed a student like L.E. to try out for your
21 golf team if they met the eligibility requirements,
22 right?

1 MS. BERGMEYER: -- to form.

2 A I'm not sure.

3 Q Okay. Let's go back to Exhibit 5. Just let
4 me know when you have it open.

5 A I do.

6 Q Okay. So on the bottom of page 1, it says
7 Steps Required for Consideration to Participate?

8 A Mm-hmm, yes.

9 Q And it lists a number of requirements,
10 including Notice to the School, Notice to the
11 TSSAA/TMSAA, Necessary Documentation, Referral to
12 Gender Identity Eligibility Committee, and
13 Notification, right?

14 A Yes.

15 Q And then above that, under Gender Identity
16 Policy and [sic] Procedure, it says, "all students
17 should have the opportunity to participate in
18 TSSAA/TMSAA activities in a manner that is consistent
19 with their gender identity, irrespective of the gender
20 listed on a student's records," right?

21 A Yes.

22 Q And then it says, "once the student has been

1 granted eligibility to participate in the sport
2 consistent with his or [sic] her gender identity, the
3 eligibility is granted for the duration of the
4 student's participate and does not need to be renewed
5 every sports season or school year," right?

6 A Yes.

7 Q So under this policy, a student like L.E. --
8 who identified as female but wants to try out for your
9 boys' golf team -- would have been able to if they met
10 these eligibility requirements, right?

11 MS. JERNIGAN-JOHNSON: Object to the
12 form.

13 A That's what that means, yes.

14 Q Okay. But it's your understanding that
15 under the revised Knox County Board of Education
16 policy, that that is no longer true, right?

17 A Yes.

18 Q Mr. Higgins, are you aware of any student
19 who has not been able to join either your team or
20 another team at Farragut High School because their
21 spot on the team was taken by a transgender student?

22 A I am not aware, no.

1 CERTIFICATE OF DEPOSITION OFFICER

2 I, JANEL B. FOLSOM, the officer before whom
3 the foregoing proceedings were taken, do hereby
4 certify that any witness(es) in the foregoing
5 proceedings, prior to testifying, were duly sworn;
6 that the proceedings were recorded by me and
7 thereafter reduced to typewriting by a qualified
8 transcriptionist; that said digital audio recording of
9 said proceedings are a true and accurate record to the
10 best of my knowledge, skills, and ability; that I am
11 neither counsel for, related to, nor employed by any
12 of the parties to the action in which this was taken;
13 and, further, that I am not a relative or employee of
14 any counsel or attorney employed by the parties
15 hereto, nor financially or otherwise interested in the
16 outcome of this action.

Janel B. Folsom

17 JANEL B. FOLSOM

18 Notary Public in and for the
19 Commonwealth of Virginia

20
21
22

1 CERTIFICATE OF TRANSCRIBER

2 I, ALICE AMUSIN, do hereby certify that this
3 transcript was prepared from the digital audio
4 recording of the foregoing proceeding, that said
5 transcript is a true and accurate record of the
6 proceedings to the best of my knowledge, skills, and
7 ability; that I am neither counsel for, related to,
8 nor employed by any of the parties to the action in
9 which this was taken; and, further, that I am not a
10 relative or employee of any counsel or attorney
11 employed by the parties hereto, nor financially or
12 otherwise interested in the outcome of this action.

13 
14

15 ALICE AMUSIN

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